85-1388

No. _____

Supreme Court, U.S.
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CLERK

In the

Supreme Court of the United States

October Term, 1985

Carrie Rose, Widow of
William L. Rose, Jr., Deceased,
Employee ..... *Petitioner*

V.

Arkansas State Police, Employer ..... *Respondent*

Public Employee Claims Division,
Arkansas Insurance Department, Carrier ..... *Respondent*

PETITION FOR WRIT OF CERTIORARI TO REVIEW DECISION OF ARKANSAS COURT OF APPEALS

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5 Hpp

QUESTION FOR REVIEW

Whether Act 929 of 1981, Section 4, of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605 (G)) is violative of the Supremacy Clause of the U.S. Constitution (Article VI, Sec. 2) by providing the $50,000.00 federal benefit paid petitioner under the Public Safety Officers Benefits Act (42 U.S.C. Section 3796) shall be credited against the State's (respondents') liability for payment of worker's compensation death benefits to petitioner, constituting an unlawful conflict in state and federal legislation?

TABLE OF CONTENTS

Page

Question for Review i

Table of Authorities ii

Opinions Below 1

Statement of Jurisdictional Grounds 2

Constitutional and Statutory Provisions Involved 2

Statement of the Case 4

Argument - Reasons for Allowance of Writ 7

Appendix A-1

A. Opinion of Arkansas Court of Appeals A-2

B. Order of Arkansas Court of Appeals Denying Petition for Rehearing B-1

C. Order of Arkansas Supreme Court Denying Petition for Review C-1

D. Opinion of Full Worker's Compensation Commission D-1

E. Opinion of Administrative Law Judge E-1

F. Joint Stipulation of Facts F-1

TABLE OF AUTHORITIES

Page

First Federal S & L Ass'n, Etc. v. Myrick, 533 F. Supp. 1041, (W.D. Ark. 1982) 15

Ham v. Rockhill, 379 U.S. 306, 85 S.Ct. 384, 13 L.Ed.2d 300 15

Hines v. Davidowitz, 312 U.S. 52, 61 S.Ct. 339, 85 L.Ed.2d 581 (1941) 11

Maryland v. Louisiana, 451 U.S. 748, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981) 15

Perez v. Campbell, 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233 (1971) 13

Pritchard v. Downie, 201 F.Supp. 893, affirmed 309 F.2d 634 (1962) 15

Article VI, Section 2, U.S. Constitution (Supremacy Clause) 5, 7, 9, 10, 11, 13

42 U.S.C. 3796 (Public Safety Officers Benefits Act) 5, 7, 8, 11

Act 929 of 1981 of Arkansas General Assembly 5, 7, 16

U.S. Code Congressional and Administrative News, Vol. 3, 1979, P. 2529 12

16 Am. Jur. 2nd Constitutional Law, Sec. 74 at p. 394 10

16 Am. Jur. 2nd Constitutional Law, Sec. 80 at p. 404 10

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PETITION FOR WRIT OF CERTIORARI TO REVIEW DECISION OF ARKANSAS COURT OF APPEALS

OPINIONS BELOW

The opinion of the Arkansas Court of Appeals dated October 16, 1985 appears as Appendix A hereto. Rehearing was denied by the Arkansas Court of Appeals on November 13, 1985, with a copy of the order appearing as Appendix B. The Arkansas Supreme Court denied a Petition for Review on November 25, 1985, with a copy of the order appearing as Appendix C. The opinion of the Full Worker's Compensation Commission delivered February 28, 1985 appears herein as Appendix D. The opinion of the Administrative Law Judge dated May 31, 1984 appears herein as Appendix E.

STATEMENT OF JURISDICTIONAL GROUNDS

The opinion of the Arkansas Court of Appeals for which review is sought was delivered on October 16, 1985. A Petition for Rehearing was timely filed and denied by Order of the Arkansas Court of Appeals on November 13, 1985. A Petition for Review was timely filed and denied by the Arkansas Supreme Court order entered November 25, 1985. This Petition is filed within 90 days of such order denying review by the Arkansas Supreme Court.

28 U.S.C. 1257(3) confers jurisdiction upon the Court to review the decision of the Arkansas Court of Appeals in that it decided an important federal question contrary to the decisions of this Court and the U.S. Constitution, rendering an act of Congress meaningless in the State of Arkansas.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article VI, Sec. 2 of U.S. Constitution (Supremacy Clause):

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

42 U.S.C. Sec. 3796 (Public Safety Officers Benefits Act):

> "(a) Amount; recipients. In any case in which the Administration determines, under regulations issued pursuant to this part, that a public safety officer has died as the direct and proximate result of a personal

injury sustained in the line of duty, the Administration shall pay a benefit of $50,000 as follows:

> (1) if there is no surviving child of such officer, to the surviving spouse of such officer;...

(e) Reductions from final benefit payment. The benefit payable under this part shall be in addition to any other benefit that may be due from any other source..."

Act 929 of 1981 of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605(G) (Supp. 1983)):

> "(G) In the event that any public employee who is entitled to receive workers' compensation benefits under the provisions of this Act, as a result of injury, disability or death, and such injuries, disabilities, or death gives rise to an entitlement of benefits under a State or Federal program or under an Act of Congress providing benefits for public safety officers serving a public agency in an official capacity, with or without compensation as a law enforcement officer or as a firefighter or in any other capacity, the state workers' compensation funds shall be entitled to a credit against its liability for payment of workers' compensation benefits to the extent of the benefits received under any State or Federal program or Act of Congress."

STATEMENT OF THE CASE

Petitioner filed her claim under the Arkansas Workers' Compensation Act for benefits as a result of her husband's death in the line of duty as an Arkansas State Police Trooper.

Respondent Public Employee Claims Division of the Arkansas Insurance Department accepted the claim as compensable, but took the position under Act 929 of 1981 (Ark. Stat. Ann. Sec. 12-3605 (g) Supp. 1983)) it was entitled to credit the $50,000 federal benefit paid petitioner under the Public Safety Officers Benefits Act (42 U.S.C. Sec. 3796) against its liability to petitioner for worker's compensation death benefits, resulting in a $50,000 reduction in the worker's compensation death benefits payable to petitioner and negating any benefit to petitioner under the federal act.

The Supremacy Clause issue was raised at every level of the proceedings, such being the primary issue in contention. The federal question was initially raised upon submission of the case to the Honorable James D. Emerson, Administrative Law Judge, upon a Joint Stipulation of Facts (F-1) and written briefs, with the Administrative Law Judge holding Act 929 of 1981 of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605(G) (Supp. 1983)) conflicted with the Public Safety Officers Benefits Act (42 U.S.C. Sec. 3796) under the Supremacy Clause of the U.S. Constitution (Act. VI, Sec. 2), hence respondent was not entitled to credit against its liability to petitioner the $50,000 federal benefit. An excerpt from the Administrative Law Judge's opinion (F-2) follows:

> "The $50,000.00 payment was made under authority of the Public Safety Officers Benefits Act, 42 U.S.C.S. Sec. 3796 (a), as follows:
>
> > (a) In any case in which the Administration, determines,...., that a

> public safety officer has died as the direct and proximate result of a personal injury sustained in the line of duty, the Administration shall pay a benefit of $50,000.00... to the surviving spouse of such officer; (and)
>
> (e) the benefit payable under this part shall be in addition to any other benefit that may be due from any other source...

This Act is in direct conflict with Act No. 929 of 1981 (Ark. Stat. Ann. Sec. 12-3605(G)). Consequently, the latter must fail under the Supremacy Clause of the United States Constitution (Art. VI, Sec. 2).

The following language is adopted from the claimant's brief:

> The language of the Public Safety Officers Benefits Act makes it readily apparent that Congress intended to provide a $50,000.00 benefit to the dependents of "any" public safety officer who dies as a result of personal injuries sustained in the line of duty, not just those who die in states other than Arkansas. Congress went on to provide in Sec. 3796 (e) of 42 U.S.C.S.:
>
> > 'The benefit payable under this part *shall be in addition to any other benefit* that may be due from any other source...' (emphasis added)
>
> The use of the language 'shall be in addition to' makes it abundantly clear Congress intended for the $50,000.00 federal benefit to be paid in addition to state Workers' Compansation benefits. 'Any other benefit' includes Workers' Compensation benefits. The use of the word "shall" makes it mandatory, not only for the benefit to be paid, but for the Courts to

> enforce the right to the benefit. The obvious purpose and objective of Congress was to provide a $50,000.00 payment to a police officer's dependents in addition to whatever payments or benefits they received from other sources, including Workers' Compensation benefits. Workers' Compensation benefits are not new, and Congress surely was aware of such in enacting this provision. Nevertheless, the language is plain and and unmistakable.'"

(E-3)

The Full Worker's Compensation Commission reversed, holding there is no conflict in the state and federal statutes named, and the Supremacy Clause of the U.S. Constitution does not invalidate the state statute under which respondent claims credit against its liability. (A-3)

The Arkansas Court of Appeals affirmed the decision of the Full Commission after considering the Supremacy Clause issue, stating: "We fail to see a Supremacy Clause argument." (A-5) A Petition for Rehearing raising the Supremacy Clause issue was denied by the Court of Appeals without comment. (B-1) A Petition for Review raising the Supremacy Clause issue was also denied by the Arkansas Supreme Court without comment. (C-1)

ARGUMENT - REASONS FOR ALLOWANCE OF WRIT

Act 929 of 1981, Section 4, of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605(G) is violative of the Supremacy Clause of the U.S. Constitution (Article VI, Sec. 2) by providing the $50,000.00 federal benefit paid petitioner under the Public Safety Officers Benefits Act (42 U.S.C. Section 3796) shall be credited against the State's (respondents') liability for payment of worker's compensation death benefits to petitioner.

This case concerns a conflict between state and federal statutes and presents a compelling question for decision by this Court, since the effect of the state statute, Act 929 of 1981 of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605(G) (Supp. 1983)), and the decision of the Arkansas Court of Appeals for which review is sought, was to render an Act of Congress, the Public Safety Officers Benefits Act (42 U.S.C. Sec. 3796), meaningless in the State of Arkansas, contrary to the express language of such act, the intent of Congress and the decisions of this Court. The actual effect of Act 929 of 1981 converts the $50,000.00 gratuity intended Congress for the widow or other dependents of police officers killed in the line of duty into a $50,000 subsidy for the State of Arkansas' worker's compensation program for public employees by providing for such $50,000.00 benefit to be credited against the state's liability to petitioner for worker's compensation death benefits, a wholly anomalous result. Not only is the petitioner aggrieved, but all other widows and dependents of police officers killed in the line of duty in Arkansas.

Respondents Public Employee Claims Division of the Arkansas Insurance Department and Arkansas State Police conceded the compensability of the worker's compensation claim of petitioner, Carrie Rose, widow of Arkansas State Police Trooper, William L. Rose, Jr., whose death on December 28, 1982 arose out of and in the course of his employment as a State Police Trooper.

Following Trooper Rose's death, petitioner Carrie Rose received from the federal government a $50,000.00 benefit payable to her under the provisions of the Public Safety Officers Benefits Act, (42 U.S.C. Sec. 3796) following a determination of the U.S. Department of Justice Trooper Rose died as a direct and proximate result of injuries sustained in the line of duty.

The question presented for review is whether respondent Public Employee Claims Division is entitled to credit against its liability for payment of workers' compensation death benefits to petitioner Carrie Rose the $50,000.00 federal benefit paid petitioner under the Public Safety Officers Benefits Act (42 U.S.C. Sec. 3796) by virtue of Act 929 of 1981, codified at Ark. Stats. Ann. 12-3605(G) (Supp. 1983), which provides as follows:

> "In the event that any public employee who is entitled to receive workers' compensation benefits under the provisions of this Act, as a result of injury, disability or death, and such injuries, disabilities, or death gives rise to an entitlement of benefits under a State or Federal program or under an Act of Congress providing benefits for public safety officers serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or as a firefighter or in any other capacity, the state workers' compensation funds shall be entitled to a credit against its liability for payment of workers' compensation benefits to the extent of the benefits received under any State or Federal Program or Act of Congress."

The federal benefit the foregoing Arkansas statutory provision was intended to take advantage of is provided under the Public Safety Officers Benefits Act (42 U.S.C. Sec. 3796(a), pertinent portions of which follows:

> "(a) In any case in which the Administration determines, ..., that a public safety officer has died as the

> direct and proximate result of a personal injury sustained in the line of duty, the Administration shall pay a benefit of $50,000.00... to the surviving spouse of such officer; (and)
>
> (e) the benefit payable under this part shall be in addition to any other benefit that may be due from any other source..."

Since the quoted provision of the Public Safety Officers Benefits Act expressly provides that the $50,000.00 benefit payable under the Act "*shall be in addition* to any other benefit that may be due from any other source" and the quoted provision of the state law expressly provides respondent Public Employee Claims Division, "shall be entitled to a credit against its liability for payment of workers' compensation benefits to the extent of the benefits received under any State or Federal program or Act of Congress", and since the purposes of the state and federal statutes clash, an obvious conflict between the state and federal law is presented.

The question of whether the state law conflicts with the federal law and hence is violative of the Supremacy Clause of the U.S. Constitution was initially presented to an Arkansas Worker's Compensation Administrative Law Judge, the Honorable James D. Emerson, who found in the petitioner's favor, holding the Arkansas act conflicted with and was superseded by the federal act, and the respondents were entitled to no credit. (E-2) The Full Worker's Compensation Commission reversed, (D-1) and its decision was upheld by the Arkansas Court of Appeals. (A-2) Subsequent Petitions for Rehearing and Review were denied by the Arkansas Court of Appeals and the Arkansas Supreme Court, respectively (B-1) and C-1). Application is now made to this Court for review of the state court decision and determination of the important federal question involved.

In order to determine the proper resolution of the conflict between the state and federal acts, an examination of

constitutional principles and decisions is required. Article VI, Sec. 2 of the United States Constitution, commonly known as the Supremacy Clause, provides:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

In analyzing the application of the Supremacy Clause, the following provisions are helpful. 16 Am. Jur. Constitution Law, Sec. 74 at pg. 394 provides in part as follows:

> "Since the Constitution provides that the laws of the United States made in pursuance thereof shall be the supreme law of the land, and anything in the constitution or laws of any state to the contrary notwithstanding, an Act of Congress constitutionally passed within the limits of its authority becomes part of the supreme law of the land in connection with the Federal Constitution itself. Federal statutes operate essentially as a part of the law of each state and are as binding on its authorities and people as are its own local constitution and laws in the same manner as if they were actually embodied in the Federal Constitution, and are controlling over state constitutional or statutory provisions."

Sec. 80 of 16 Am. Jur. 2nd Constitutional Law at pg. 404 provides further in part:

> "Since laws enacted in pursuance of the Federal Constitution are given supreme status by the terms of the Constitution itself, it follows that such federal laws control the constitutions and the laws of the states, and cannot be controlled by them. State laws are always subordinate and federal laws enacted pursuant to the Constitution are always paramount,

> hence the State law is void if contrary to a valid Act of Congress... In resolving a contention that a particular state statute is invalid under the supremacy clause as conflicting with the federal statute, *the controlling principle is whether the state statute interferes with and frustrates the federal statute*, and not merely whether the state statute is designed for some conceivable state purpose. In other words, the existence *vel non* of a conflict depends on effect of the state statue and cannot be determined merely by a consideration of its purpose." (emphasis added)

One of the leading cases applying the Supremacy Clause in conflicts of this nature between state and federal law is *Hines v. Davidowitz*, 312 U.S. 52, 61 S.Ct. 339, 85 L.Ed.2d 581 (1941). In *Hines*, this Court articulated the oft-quoted test applicable to Supremacy Clause controversies of this kind at page 67 of 312 U.S.:

> "Our primary function is to determine whether, under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

In view of the *Hines* test, we must initially examine the purposes and objectives of Congress in order to determine whether those purposes and objectives are frustrated by the application of the state act.

The language of the Public Safety Officers Benefits Act makes it readily apparent that Congress intended to provide a $50,000.00 benefit to the dependents of "any" public safety officer who dies as a result of personal injuries sustained in the line of duty, not just those who die in states other than Arkansas. Congress went on to provide in Sec. 3796 (e) of 42 U.S.C.:

> "The benefit payable under this part *shall be in addition to any other benefit* that may be due from any other source..." (emphasis added)

The use of the language "shall be in addition to" makes it abundantly clear Congress intended for the $50,000.00 federal benefit to be paid in addition to state Workers' Compensation benefits. "Any other benefit" includes Workers' Compensation benefits. The obvious purpose and objective of Congress was to provide a $50,000.00 payment to a police officer's dependents in addition to whatever payments or benefits they received from other sources, including Workers' Compensation benefits.

Legislative history is also helpful in determining Congressional intent. An excerpt from the official Congressional committee reports appearing in U.S. Code Congressional and Administrative News, Volume 3, 1979, at pg. 2529 follows:

> "The committee has rejected suggestions that the Public Safety Officers Benefits program be transferred from LEAA to the Department of Labor, which administers the provisions for compensation of State and local law enforcement officers injured while enforcing a Federal law. The Public Safety Officers Benefits Program is an outstanding example of efficient government. *Under the PSOB Act, the surviving dependents of State and local public safety officers killed in the line of duty as a result of a personal injury are entitled to a $50,000.00 gratuity.* LEAA has taken a very active role in meeting the needs of the families of these officers. It generally takes less than two months from the time a claim is filed until a final determination is made. This is impressive given the amount of investigation frequently needed and the limited staff available in the PSOB office.
>
> *The committee feels that it would be unfortunate to take any action which might impede the effectiveness of this operation.*" (emphasis added)

The foregoing portion of the official committee report makes it clear Congress intended to provide a $50,000.00

gratuity to police officers, and that Congress intended to zealously safeguard the full implementation and effectiveness of the program providing for such benefit, as indicated by the last sentence quoted.

Here, the previously quoted state law respondent Public Employee Claims Division seeks to apply would clearly stand "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress", in the language of *Hines*, supra. In fact, by taking away from the petitioner entitlement to worker's compensation benefits equal to the federal benefit paid, application of the state law effectively nullifies the $50,000.00 benefit paid petitioner under the federal act, as well as obviously defeating the benevolent intent of Congress. What the federal law gives, the state law takes away. The Supremacy Clause prohibits such contravention of federal law by a state enactment. As applied, the state act effectively shifts the burden to the federal government for the first $50,000.00 of Workers' Compensation death benefits payable to petitioner and all other widows and dependents similarly situated. Congress intended to provide a $50,000.00 gratuity the dependents of police officers killed in the line of duty, not subsidize the State of Arkansas Worker's Compensation program.

A more recent case, *Perez v. Campbell*, 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233 (1971), applied the *Hines* test in determining whether Arizona's Motor Vehicle Safety Responsibility Act providing for suspension of a motorist's license for permitting an unsatisfied judgment against such motorist to remain unsatisfied for 60 days conflicted with the Bankruptcy Act and hence was violative of the Supremacy Clause of the Federal Constitution. In resolving the question, this Court stated at pg. 239 of 29 L.Ed.2d the proper mode of analysis:

> "Deciding whether a state statute is in conflict with a federal statute and hence invalid under the

> Supremacy Clause is essentially a two-step process of first ascertaining the construction of the two statutes, and then determining the constitutional question whether they are in conflict."

In construing the Bankruptcy Act, this Court in *Perez*, supra, stated that one of the primary purposes of the Bankruptcy Act was to give debtors "a new opportunity in life" unhampered by pre-existing debt. The purpose of the state Act was to require financial responsibility on the part of motorist. This Court went on to say at pg. 242 of 29 L.Ed.2d:

> "With the construction of both statutes clearly established, we proceed immediately to the constitutional question whether a state statute that protects judgment creditors from 'financially irresponsible persons' is in conflict with a federal statute that gives discharged debtors a new start 'unhampered by the pressure and discouragement of pre-existing debt.' *As early as Gibbons v. Ogden, 9 Wheat 1, 6 L.Ed. 23 (1824), Chief Justice Marshall stated the governing principle that 'acts of the State Legislatures... [which] interfere with, or are contrary to the laws of Congress, made in pursuance of the constitution,' are invalid under the Supremacy Clause.* Three decades ago Mr. Justice Black, after reviewing the precedents, wrote in a similar vein that, while 'this Court in considering the validity of state laws in the light of treaties or federal laws touching the same subject, had made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsitency; violation; curtailment; and interference,...*in the final analysis,' our function is to determine whether a challenged state statute 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'* (cites omitted) Since *Hines* the Court has frequently adhered to this articulation of the meaning of the Supremacy Clause." (cites omitted) (emphasis added)

In holding the portion of the State Motor Vehicle Responsibility Act invalid under the Supremacy Clause, the Court stated at pg. 243 of 29 L.Ed.2d 233:

> "We can no longer adhere to the aberrational doctrine...that state law may frustrate the operation of federal law as long as the state legislature in passing its law had some purpose in mind other than one of frustration."

In view of *Perez*, supra, it is clear the primary consideration is the effect of state legislation on fulfillment of the purposes of Congress in determining the validity of the state law under the Supremacy Clause. Here, there can be no question the state law in question defeats the purpose of Congress in providing a $50,000.00 gratuity to the dependents of police officers killed in the line of duty over and above all other benefits received. Hence, the particular provision of the Arkansas act must yield to the provision of the federal act which provides the federal benefit "shall be in addition to any other benefit". To hold otherwise would permit the State legislature to effectively frustrate, thwart and nullify the purpose of Congress in enacting the federal law. See also *Ham v. Rockhill*, 379 U.S. 306, 85 S.Ct. 384, 13 L.Ed.2d 300; *Maryland v. Louisiana*, 451 U.S. 748, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981); *Pritchard v. Downie*, 201 F. Supp. 893, Affirmed 309 F. 2d 6345 (1962); and *First Federal S & L Ass'n., Etc. v. Myrick*, 533 F. Supp. 1041, (W.D. Ark. 1982).

CONCLUSION

Act 929 of 1981 relied upon by respondent Public Employee Claims Division must yield to and is superseded by the provisions of the Public Safety Officers Benefits Act under the Supremacy Clause of the U.S. Constitution, such federal act expressly providing the $50,000.00 benefit "shall be in addition to" any other benefits from any other source. The effect of the Arkansas Act is to shift the burden to the federal government for the first $50,000.00 in worker's compensation death benefits payable to dependents of police officers killed in Arkansas. The only benefit is to the State of Arkansas, not the petitioners and others like her. Congress did not intend such a result. Petitioner respectfully prays that a Writ of Certiorari issue to review the decision of the Arkansas Court of Appeals.

Respectfully submitted,

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO REVIEW DECISION OF ARKANSAS COURT OF APPEALS

A.

DIVISION II

ARKANSAS COURT OF APPEALS
No. CA 85-155

Opinion Delivered
October 16, 1985

CARRIE ROSE, Widow of WILLIAM L. ROSE, JR., Deceased Employee

APPELLANT

v.

ARKANSAS STATE POLICE, and PUBLIC EMPLOYEE CLAIMS DIVISION

APPELLEE

AN APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AFFIRMED

DONALD L. CORBIN, Judge

The facts of this case are not in dispute. William Rose, an Arkansas State Trooper, was killed in the line of duty on December 28, 1982. Appellant, his widow, was paid a $50,000 benefit under the Public Safety Officers' Death Benefits Act, 42 U.S.C. § 3796 (1982). She also received an award of $10,000 pursuant to Ark. Stat. Ann. § 12-2348 (Repl. 1979) [1] and an additional award of $5,000 pursuant to Ark. Stat. Ann. § 42-427 (Repl. 1977). Appellee, Public Employee Claims Division, Arkansas Insurance Department, acknowledges that the claim for death benefits is com-

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This was amended by Act 839 of 1985 which increased benefits available up to $100,000.

pensable under the Workers' Compensation Act but contends that it is entitled to a credit against its liability to the extent of the three death benefits totaling $65,000 received by the widow. The Commission reversed the decision of the Administrative Law Judge who refused to credit the $65,000 against workers' compensation benefits. The Commission relied on Ark. Stat. Ann. § 12-3605(G) (Supp. 1985), which provides:

> (G) In the event that any public employee who is entitled to receive workers' compensation benefits under the provisions of this Act, as a result of injury, disability or death, and such injuries, disabilities, or death gives rise to an entitlement of benefits under a State or Federal program or under an Act of Congress providing benefits for public safety officers serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or as a firefighter or in any other capacity, the state workers' compensation funds shall be entitled to a credit against its liability for payment of workers' compensation benefits to the extent of the benefits received under any State or Federal program or Act of Congress.

The Commission granted appellee a credit of $65,000 against death benefits under the Arkansas Workers' Compensation Act. We affirm.

Appellant, as her first assignment of error, alleges that the Full Commission erred in holding that Act 929 of 1981, Ark. Stat. Ann. § 12-3605(G), was not superseded by the Public Safety Officers' Death Benefits Act under the Supremacy Clause, U.S. Const. art. VI, § 2. Appellant relies on the following pertinent provision of the Public Safety Officers Benefits Act:

> (a) In any case in which the Administration determines, ..., that a public safety officer has died as the direct and proximate result of a personal injury sus-

> tained in the line of duty, the Administration shall pay a benefit of $50,000.00...to the surviving spouse of such officer; (and)
>
> (e) the benefit payable under this subchapter shall be in addition to any other benefit that may be due from any other source...

This section, together with the Supremacy Clause, appellant argues, circumvents the limiting effects of Ark. Stat. Ann. § 12-3605(G).

It is axiomatic that under the terms of the United States Constitution, certain powers are entrusted to the federal government alone, while others are reserved to the states, and still others may be exercised concurrently by both the federal and state governments. The 10th Amendment to the United States Constitution provides:

> *Rights reserved to states or people.* — The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

U.S. Const. amend. X.

The constitutionality of an offset between federal benefits and state benefits was recognized in *Richardson v. Belcher*, 404 U.S. 78 (1971). Mr. Justice Stewart, in upholding Section 224 of the Social Security Act, 42 U.S.C. § 424a (1982), which requires a reduction in social security benefits to reflect workers' compensation benefits, noted that:

> The original purpose of state workmen's compensation laws was to satisfy a need inadequately met by private insurance or tort claim awards. Congress could rationally conclude that this need should continue to be met primarily by the States, and that a federal program that began to duplicate the efforts

> of the States might lead to the gradual weakening or atrophy of the state programs.

Id. at 84.

Congress has not shown a clear-cut manifestation of an intent to exercise supremacy over a state's right to legislate workers' compensation benefits by the passage of the Public Safety Officers' Death Benefits Act. We fail to see a supremacy clause argument. This is especially true when similar cases dealing with federal-state setoffs have been upheld constitutionally.

Finally, appellant alleges that the Full Commission erred in construing Act 929 of 1981 to require crediting of benefits paid by Arkansas Claims Commission and Arkansas State Police against appellee's liability to appellant. Appellant received a $10,000 benefit from the Arkansas Claims Commission pursuant to Ark. Stat. Ann. §12-2348, and $5,000 from the Arkansas State Police pursuant to Ark. Stat. Ann. § 42-427, following a determination that Trooper Rose lost his life in the line of duty.

"The controlling consideration in the interpretation of a workmen's compensation statute is that the act must be liberally construed with all doubts resolved in favor of the claimant, which is necessary to effect the beneficient and humane purposes of the Act," *Mohawk Rubber Co. v. Buford*, 259 Ark. 614, 535 S.W.2d 819 (1976). However, we can not avoid the crystal clear language of Ark. Stat. Ann. § 12-3605(G) which mandates the crediting of "benefits received under any State or Federal Program or any Act of Congress" against workers' compensation benefits. It is obvious from a review of cases from other states that this is not an unknown or unheard-of proposition. *Nooe v. Baltimore*, 28 Md. App. 348, 345 A.2d 134 (1974), (applied Maryland statute which discharged city's obligation under workers' compensation law where employee received benefits, in excess of those due under workers' compensation law, from the

employer under a city ordinance); *Coletta v. State*, 106 R.I. 764, 263 A.2d 681 (1970), (held that statute authorized the state to credit payments received from the federal government against benefits due under workers' compensation law); *State v. Industrial Commission*, 160 Ohio St. 443, 117 N.E.2d 22 (1954), (held that the Ohio General Assembly had power to enact Workers' Compensation Act and to determine under what terms and conditions employees are eligible to participate). Legislation in other states providing for off-set of workers' compensation benefits against benefits available under other state or federal programs has been strictly construed. In *Contois v. State*, 95 R.I. 296, 186 A.2d 741 (1962), Roland Contois's widow and minor children applied for workers' compensation benefits in Rhode Island after Roland Contois died while on active duty in the Rhode Island National Guard. The Rhode Island Workers' Compensation Commission sought to offset workers' compensation benefits with benefits accruing under a federal act.

R.I. Gen. Laws § 28-31-11 (1968 Renactment) provides:

> Where an injured member of the national guard or the Rhode Island state guard receives pay, subsistence, hospitalization, or other benefits from the United States as the result of such injury, such payments shall not affect his right to receive compensation under chapters 29 to 38, inclusive, of this title. When the payments received from the United States are less than he would have been entitled to receive under said chapters, then he shall be entitled to receive all the benefits to which he would have been entitled under said chapters less the benefits actually received from the United States.

The Rhode Island Supreme Court held that since provision § 28-31-11 is silent as to death benefits, the legislature did not intend that it should be applicable in such a situation.

A majority of American jurisdictions provide some form of setoff in the area of wage-loss legislation. 4 Larson, Law of Workmen's Compensation § 97.20. The Arkansas

General Assembly has the authority to legislate offsetting of benefits and it has chosen to do so with the enactment of Ark. Stat. Ann. § 12-3605(G). Budgetary management is an increasingly burdensome task for the members of the legislature. The goal may very well be to avoid "double-dipping," i.e., receiving benefits from more than one source for the same death or injury. For whatever reason, our Constitution does not empower this Court to second-guess our legislators who are charged with the awesome responsibility of spreading the public dollar over endless programs for the public welfare. If the legislature does not intend for Ark. Stat. Ann. § 12-3605(G) to be applicable in cases such as the one at bar, then it needs to deal directly with the issue. The power to do so is entirely within the legislature's province. We find no error.

AFFIRMED.

Cooper and Glaze, JJ., agree.

B.

OFFICE OF THE CLERK
SUPREME COURT OF THE STATE OF ARKANSAS
ARKANSAS COURT OF APPEALS
LITTLE ROCK

November 13, 1985

Noyl Houston
Attorney at Law
P.O. Box 1233
Jonesboro, AR 72403

RE: CA85-155 Carrie Rose, Widow v. Arkansas State Police et al

Dear Mr. Houston:

The Arkansas Court of Appeals made the following order today in the above styled case:

"Petition for Rehearing is denied."

Sincerely yours,

/s/ Dona L. Williams
Dona L. Williams, Clerk

DLW:mf

cc: Jerry G. James
Commission

C-1

C.

OFFICE OF THE CLERK
SUPREME COURT OF THE STATE OF ARKANSAS
ARKANSAS COURT OF APPEALS
LITTLE ROCK

November 25, 1985

Noyl Houston
Attorney at Law
P.O. Box 1233
Jonesboro, AR 72403

Re: 85-267 Carrie Rose, Widow v. Arkansas State Police et al

Dear Mr. Houston:

The Court made the following order in the above styled case today:

"Petition for Review is denied.
Purtle, J., not participating."

Sincerely yours,

/s/ Dona L. Williams
Dona L. Williams, Clerk

DLW:rh

cc: Jerry G. James

D.

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. D306148

CARRIE ROSE, WIDOW OF WILLIAM L. ROSE, JR., DECEASED EMPLOYEE — CLAIMANT

ARKANSAS STATE POLICE, PUBLIC EMPLOYER — RESPONDENT

OPINION FILED FEBRUARY 28, 1985

Review by the FULL COMMISSION in Little Rock, Arkansas.

Claimant represented by NOYL HOUSTON, Attorney at Law, Trumann, Arkansas.

Respondent represented by JERRY G. JAMES, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

Opinion by Rotenberry, Chairman.

This case is before the Full Commission on appeal by respondent from a decision of an Administrative Law Judge dated May 31, 1984, holding that respondent is not entitled to a credit against its workers' compensation liability for state and federal benefits paid to claimant in connection with her husband's death. It is our determination that the decision of the Administrative Law Judge must be reversed. This case has been presented to the Commission upon a complete stipulation of facts. That stipulation is summarized as follows.

On December 28, 1982, the decedent, William L. Rose, Jr., died in the line of duty as an Arkansas State Trooper employed by the Arkansas State Police. The decedent's death is therefore stipulated to be compensable under the Arkansas Workers' Compensation Act.

The decedent's sole dependent under the Workers' Compensation Act is claimant, his surviving wife, and at the time of his death decedent's average weekly wage was such as would entitle claimant to the then maximum benefit rate of $140.00 a week.

Subsequent to decedent's death, claimant applied for and received from the federal government a $50,000.00 benefit payable to her under the provisions of the Public Safety Officers Benefits Act, 42 U.S.C. §3796(E).

Claimant also applied for and received from the Arkansas Claims Commission a $10,000.00 benefit payable to her under the provisions of Act 43 of 1969, as amended, codified as Ark. Stat. Ann. §12-2348.

Claimant also applied for and received from the Arkansas State Police Commission a $5,000.00 benefit payable to her under the provisions of Act 91 of 1959, as amended, codified as Ark. Stat. Ann. §42-427.

Respondent, while conceding that the decedent's death has given rise to a compensable workers' compensation claim, contends that it is entitled to a credit against its compensation liability in the aggregate amount of $65,000.00, the total sum claimant has received under the aforementioned federal and state benefit programs, by reason of Act 929 of 1981, codified as Ark. Stat. Ann. §12-3601 *et seq.* Specifically, Ark. Stat. Ann. §12-3605(G) states:

> In the event that any public employee who is entitled to receive workers' compensation benefits under the provisions of this Act as a result of injury, disability or

> death, and such injuries, disabilities, or death gives rise to an entitlement of benefits under a State or Federal program or under an Act of Congress providing benefits for public safety officers serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or as a firefighter or in any other capacity, the state workers' compensation funds shall be entitled to a credit against its liability for payment of workers' compensation benefits to the extent of the benefits received under any State or Federal program or Act of Congress.

The Administrative Law Judge has ruled that Ark. Stat. Ann. §12-3605(G) is in conflict with the Public Safety Officers Benefits Act, a federal statute, and consequently the state statute providing for a credit is invalid. The Administrative Law Judge also ruled with respect to the state benefits collected by claimant that Ark. Stat. Ann. §12-3605(G) simply has no application to these payments.

It is our conclusion that the Administrative Law Judge erred in his interpretation of the various state and federal statutes applicable to this case. Act 929 of 1981 [Ark. Stat. Ann. §12-3605(G)] clearly provides for the credit which the respondent, the State of Arkansas, is claiming in this case. We see no conflict between Act 929 of 1981 and the Public Safety Officers Benefits Act, 42 U.S.C. §3796(E). Thus, the Supremacy Clause of the United States Constitution does not operate to invalidate the state statute under which respondent is claiming a credit against its liability in this case. We also see no conflict between either of the state benefit program statutes involved, Ark. Stat. Ann. §12-2348 and Ark. Stat. Ann. §42-427, and Act 929 of 1981. The wisdom and the policy of allowing the State of Arkansas a credit against its liability is a matter which addresses itself to the legislature. The duty of this quasi-judicial tribunal is merely to give effect to the statute if valid and applicable to the facts of a given case.

The decision of the Administrative Law Judge is reversed and respondent is hereby found to be entitled to a credit in the aggregate amount of $65,000.00 against its liability to the claimant for workers' compensation benefits.

IT IS SO ORDERED.

/s/ Burl C. Rotenberry
BURL C. ROTENBERRY, Chairman

/s/ Allyn C. Tatum
ALLYN C. TATUM, Commissioner

/s/ J. Melvin Farrar
J. MELVIN FARRAR, Commissioner

E.

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. D306148

CARRIE ROSE, WIDOW OF WILLIAM L. ROSE, JR., DECEASED, EMPLOYEE — CLAIMANT

ARKANSAS STATE POLICE, EMPLOYER — RESPONDENT

ARKANSAS INSURANCE DEPARTMENT PUBLIC EMPLOYEE CLAIMS DIVISION, INSURANCE CARRIER — RESPONDENT

OPINION FILED MAY 31, 1984

This matter comes forth on Stipulations of Fact and Briefs of the parties.

Claimant represented by the HONORABLE NOYL HOUSTON, Attorney at Law, Trumann, Arkansas.

Respondent represented by the HONORABLE JERRY JAMES, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

This matter comes on to consider whether the respondent herein should be allowed a credit for sums paid to the widow through outside sources.

It was stipulated that the deceased was employed by the respondent on December 28, 1982, when he was killed in the line of duty. He earned wages sufficient to entitled him to benefits at the rate of $140.00 per week. The deceased widow was paid $50,000.00 under the provisions of the Public Safety

Officers Benefits Act (42 U.S.C.S. Sec. 3796). Furthermore, the Arkansas Claims Commission paid an additional $10,000.00 in benefits under Ark. Stat. Ann. §12-2348. Also, the Arkansas State Police Commission paid $5,000.00 to the deceased's widow. All of these payments were based upon the fact that the deceased employee was killed in the line of duty as an Arkansas State Police officer. The point of controversy comes about when the respondent workers' compensation carrier attempts to assert a credit for workers' compensation benefits on the amounts previously set forth above from unrelated sources. The respondent-carrier bases its contention for credit on Act No. 929 of 1981 (Ark. Stat. Ann. §12-3605(g).

From all of the facts and the evidence, I make the following:

FINDINGS AND CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On December 28, 1982, the relationship of employee-employer-carrier existed among the parties.

3. On December 28, 1982, the claimant earned wages sufficient to entitled him to weekly compensation benefits of $140.00.

4. On December 28, 1982, the claimant sustained an injury arising out of and in the course of his employment.

5. The claimant's widow is entitled to full and complete workers' compensation benefits.

6. The respondent is not entitled to credit for payments made through other sources.

7. The respondent has controverted the payment of all benefits.

The $50,000.00 payment was made under authority of the Public Safety Officers Benefits Act, 42 U.S.C.S. §3796 (a), as follows:

> "(a) In any case in which the Administration, determines, . . ., that a public safety officer has died as the direct and proximate result of a personal injury sustained in the line of duty, the Administration shall pay a benefit of $50,000.00 . . . to the surviving spouse of such officer; (and)
>
> (e) the benefit payable under this part shall be in addition to any other benefit that may be due from any other source . . . "

This Act is in direct conflict with Act No. 929 of 1981 (Ark. Stat. Ann. §12-3605 (g). Consequently, the latter must fail under the Supremacy Clause of the United States Constitution (Art. VI, Sec. 2).

The following language is adopted from the claimant's brief:

> "The language of the Public Safety Officers Benefits Act makes it readily apparent that Congress intended to provide a $50,000.00 benefit to the dependents of "any" public safety officer who dies as a result of personal injuries sustained in line of duty, not just those who die in states other than Arkansas. Congress went on to provide in Sec. 3796 (e) of 42 U.S.C.S.:
>
> > 'The benefit payable under this part *shall be in addition to any other benefit* that may be due from any other source...' (Emphasis added)
>
> The use of the language 'shall be in addition to' makes it abundantly clear Congress intended for the $50,000.00 federal benefits to be paid in addition to state Workers' Compensation benefits. 'Any other benefit' includes Workers' Compensation benefits. The use of the word

"shall" makes it mandatory, not only for the benefit to be paid, but for the Courts to enforce the right to the benefit. The obvious purpose and objective of Congress was to provide a $50,000.00 payment to a police officer's dependents in addition to whatever payments or benefits they received from other sources, including Workers' Compensation benefits. Workers' Compensation benefits are not new, and Congress surely was aware of such in enacting this provision. Nevertheless, the language is plain and unmistakable."

The $5,000.00 benefit from the Arkansas State Police Commission is codified under Ark. Stat. Ann. §42-427. I do not believe that the framers of Act No. 929 of 1981 intended to take away with one hand that which is given by the other. Likewise, I do not believe that the intent of the framers of this Act was to subsidize the respondent. If we followed the interpretation of the respondent, they would be collecting subsidies from all sorts of unknown and unwilling sources. I think that we can all rest assured that the Arkansas Claims Commission and the Arkansas Police Commission did not intend to subsidize the Public Employee Claims Commission by the payment of their respective benefits. These two agencies created a benefit, over and above that due the rank and file of State employee, due to the hazardous nature of the job. Now, under the heresy of some misguided legislation, the respondent is attempting to take these methods away. The fundamental purpose of the Arkansas Workers' Compensation Act forbids the conclusion espoused by the respondent.

The respective parties in this action have prepared excellent briefs. Certain passages have been used in this opinion. However, the claimant's brief and reply are adopted and made a part of this opinion, and attached thereto as though set out herein word for word.

AWARD

The respondent is hereby ordered and directed to pay to the claimant widow full and complete workers' compensa-

tion benefits in accordance with this opinion and without regard to other payments made from any other source.

The respondent shall pay to the claimant's attorney, the Honorable Noyl Houston, the maximum statutory attorney's fee on this entire award.

This award shall bear interest pursuant to §19 (g) until paid.

The respondent's claim for credit based upon other benefits is specifically denied.

IT IS SO ORDERED.

/s/ James D. Emerson
JAMES D. EMERSON
Administrative Law Judge

rh

F.

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. D306148

CARRIE ROSE, WIDOW OF WILLIAM LONZO ROSE, JR., DECEASED, EMPLOYEE — CLAIMANT

VS.

ARKANSAS STATE POLICE, EMPLOYER — RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION, ARKANSAS INSURANCE DEPARTMENT, CARRIER — RESPONDENT

JOINT STIPULATION OF FACTS

COME the parties, Carrie Rose, widow of William Lonzo Rose, Jr., deceased, as claimant, and the Arkansas State Police and the Public Employee Claims Division of the Arkansas Insurance Department, as respondent-employer and respondent-carrier respectively, and hereby enter into the following Joint Stipulation of Facts:

That on December 28, 1982, the decedent William Lonzo Rose, Jr. was gainfully employed as a State Trooper by the Arkansas State Police. That on that date, Trooper Rose died, which death arose out of and in the course of his employment and therefore, qualifies as a compensable death under the provisions of the Arkansas Workers' Compensation Act.

That at the time of his death, Trooper Rose left surviving as his sole heir and dependent, his wife, Carrie Rose

who, as such dependent, has made claim for death benefits under Section 15 of the Arkansas Workers' Compensation Act. That at the time of his death the decedent was earning an average weekly wage of $400.00 which, under the provisions of Section 15(c) First of the Act, would qualify decedent's widow for death benefits of $140.00 per week.

That subsequent to her husband's death, claimant, Carrie Rose, applied for and received from the Federal Government a $50,000 benefit payable to her under the provisions of the Public Safety Officers Benefits Act, 42 U.S.C.S., See. 3796(E), following a determination of the U.S. Department of Justice that Trooper Rose died as a direct and proximate result of injuries sustained in the line of duty.

That in addition, claimant Carrie Rose applied for and received from the Arkansas Claims Commission a $10,000 benefit payable to her under the provisions of Act No. 43 of 1969, as amended, codified at Ark. Stats. Section 12-2348, following a determination of the Claims Commission that Trooper Rose was killed in the line of duty as an Arkansas State Trooper.

That in addition, claimant applied for and received from the Arkansas State Police Commission a $5,000.00 benefit payable to her under the provisions of Act. No. 91 of 1959, codified at Ark. Stats. Section 42-427, which provides that such benefits shall be payable to the wife of an officer of the State Police who loses his life in the course of his employment.

That subsequent to the death of her husband, claimant timely filed a claim for death benefits under the provisions of Section 15 of the Arkansas Workers' Compensation Act. That respondent Public Employee Claims Division concedes that decedent's death arose out of and during the course of his employment and is therefore a compensable death which would otherwise entitle claimant to such death benefits as

provided by law, but said Public Employee Claims Division contends that no benefits are presently payable to claimant as a result of the application of Act 929 of 1981, codified at Ark. Stats. Sections 12-3601-3608, specifically Section 12-3605(G) which provides:

> "In the event that any public employee who is entitled to receive workers' compensation benefits under the provisions of this Act as a result of injury, disability or death, and such injuries, disabilities, or death gives rise to an entitlement of benefits under a State or Federal program or under an Act of Congress providing benefits for public safety officers serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or as a firefighter or in any other capacity, the state workers' compensation funds shall be entitled to a credit against its liability for payment of workers' compensation benefits to the extent of the benefits received under any State or Federal program or Act of Congress."

Respondent Public Employee Claims Division contends it has no liability to claimant for the present payment of workers' compensation death benefits and will have no liability to commence payment of such death benefits until credit for the benefits received by claimant as hereinabove set forth has been exhausted at the rate of $140.00 per week commencing on the date of decedent's death.

Claimant, on the other hand, rejects this contention, contending that respondent Public Employee Claims Division is entitled to no credit for the $50,000 paid to her under the Public Safety Officers Benefits Act of 1976 (42. U.S.C.S. Section 3796) because such federal legislation expressly provides that:

> "The benefit payable under this part shall be in addition to any other benefit that may be due from any other source . . .",

and that such federal legislation supercedes and takes precedence over any conflicting legislation. Claimant contends that to allow such credit would amount to shifting the burden to the Federal Government for the first $50,000 of workers' compensation death benefits, and would defeat the expressed intent of Congress.

Claimant further contends that respondent Public Employee Claims Division is entitled to no credit for the $10,000 paid to her by the State Claims Commission under Ark. Stats. Section 12-2348, and the $5,000 paid to her under Ark. Stats. Section 42-427, on the grounds that such payments are remedial in nature and are supplemental to workers' compensation coverage.

DATED this 23rd day of November, 1983.

CARRIE ROSE, CLAIMANT

BY: NOYL HOUSTON
P.O. BOX 54
Trumann, AR 72472
(501) 483-6144

Attorney for Claimant

ARKANSAS STATE POLICE,
EMPLOYER, RESPONDENT

ARKANSAS PUBLIC
EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER,
RESPONDENT

BY: JERRY G. JAMES
Public Employee Claims Div.
Arkansas Insurance Dept.
Suite 820, University Tower Bldg.
12th & University
Little Rock, AR 72204
(501) 663-0355

Attorney for Respondents

Supreme Court, U.S.
FILED
MAY 8 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1388 (2)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

CARRIE ROSE, Widow of
WILLIAM L. ROSE, JR., Deceased, Employee,
Petitioner,

v.

ARKANSAS STATE POLICE, Employer,
and
PUBLIC EMPLOYEE CLAIMS DIVISION
ARKANSAS INSURANCE DEPARTMENT, Carrier,
Respondents.

On Petition For Writ Of Certiorari To The Arkansas Court Of Appeals

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BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION

JERRY G. JAMES
Suite 820, University Tower
Twelfth and University
Little Rock, Arkansas 72204
(501) 663-0355

ARKANSAS STATE POLICE and
PUBLIC EMPLOYEE CLAIMS DIVISION,
ARKANSAS INSURANCE DEPARTMENT,
Respondents

Attorney for Respondents

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

17pp

QUESTION PRESENTED FOR REVIEW

Whether Act 929 of 1981, Section 4, of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605(G) which provides that State workers' compensation funds for public employees shall be entitled to a credit against its liability for payment of workers' compensation benefits to the extent of the benefits received under any State or Federal program or Act of Congress violates the Supremacy Clause of the U.S. Constitution and constitutes an unlawful conflict in State and Federal legislation?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTIONAL STATEMENT	2
CONSTITUTIONAL PROVISIONS AND STATUTES	2
STATEMENT OF THE CASE	4
ARGUMENT	4
CONCLUSION	11

TABLE OF AUTHORITIES

	Page
Coletta v. State, 106 R.I. 764 263 A.2d 681 (1970)	11
Eagle Star Insurance Co. v. Deal, 337 F.Supp. 1264 (1972), reversed 474 F.2d 1216 (1973)	8
Nooe v. Baltimore, 28 Md. App. 348, 345 A.2d 134 (1974)	10-11
Phifer v. Union Carbide Corp., 492 F.Supp. 484 (E.D. Ark. 1980)	9
Richardson v. Belcher, 404 U.S. 78 (1971)	10
State v. Industrial Commission, 160 Ohio St. 443, 117 N.E. 2d 22 (1954)	11
U.S. Constitution Article VI, Sec. 2	2, 4
42 U.S.C. 3796 (Public Safety Officers Benefits Act)	2, 4, 5, 9
Act 929 of 1981 of the Arkansas General Assembly	i, 3, 4, 6
U.S. Constitution, Amendment X	3, 6, 11
16 Am Jur 2d, Constitutional Law, Sec. 292 at pp. 797, 798	7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-1388

CARRIE ROSE, Widow of WILLIAM L. ROSE, JR., Deceased Employee,

Petitioner,

v.

ARKANSAS STATE POLICE, Employer,
and
PUBLIC EMPLOYEE CLAIMS DIVISION
ARKANSAS INSURANCE DEPARTMENT, Carrier,

Respondents.

On Petition For Writ Of Certiorari To The Arkansas Court Of Appeals

---

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION

OPINIONS BELOW

The opinion of the Arkansas Court of Appeals dated October 16, 1985, *Rose v. Arkansas State Police*, 16 Ark. App. 96, 697 S.W.2d 927 (1985), from which review is sought, is set forth in petitioner's Appendix A, pp. A-2—A-7. The opinion of the Arkansas Workers' Compensation Commission dated February 28,

1985 appears as petitioner's Appendix D, pp. D-1—D-4. The opinion of the Administrative Law Judge dated May 31, 1984 is shown as petitioner's Appendix E, pp. E-1—E-5.

JURISDICTIONAL STATEMENT

Respondents deny that this court has jurisdiction to review this case as respondents genuinely believe no federal question is presented, no Supremacy Clause question is presented, no conflict between state and federal statute is presented, and therefore, no question exists which affords this honorable court a basis for granting review.

CONSTITUTIONAL PROVISIONS AND STATUTES

Article VI, Sec. 2 of U.S. Constitution (Supremacy Clause):

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding."

42 U.S.C. Sec. 3796 (Public Safety Officers Benefits Act):

> "(a) Amount; recipients. In any case in which the Administration determines, under regulations issued pursuant to this part, that a public safety officer has died as the direct and proximate result of a personal injury sus-

tained in the line of duty, the Administration shall pay a benefit of $50,000 as follows:

(1) if there is no surviving child of such officer, to the surviving spouse of such officer; . . .

(e) Reductions from final benefit payment. The benefit payable under this part shall be in addition to any other benefit that may be due from any other source . . ."

Act 929 of 1981 of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605(G) (Supp. 1983)):

"(G) In the event that any public employee who is entitled to receive workers' compensation benefits under the provisions of this Act, as a result of injury, disability or death, and such injuries, disabilities, or death gives rise to an entitlement of benefits under a State or Federal program or under an Act of Congress providing benefits for public safety officers serving a public agency in an official capacity, with or without compensation as a law enforcement officer or as a firefighter or in any other capacity, the state workers' compensation funds shall be entitled to a credit against its liability for payment of benefits received under any State or Federal program or Act of Congress."

U.S. Constitution, Amendment X:

"*Rights reserved to states or people.*—The powers not delegated to the United States by the Constitution, nor prohibited by it to

the states, are reserved to the states respectively, or to the people."

STATEMENT OF THE CASE

Respondent concurs with the factual recitations of petitioner's statement of the case, but takes strong issue with the propriety of petitioner setting forth argumentative material by quoting from the opinion of the Administrative Law Judge who "adopted" portions of petitioner's argument contained within her brief filed initially in this case.

ARGUMENT

Act 929 of 1981, Section 4, of the Arkansas General Assembly (Ark. Stats. Ann 12-3605(G)) does not violate the Supremacy Clause of the U.S. Constitution (Article VI, Sec. 2). It does not provide that the $50,000.00 federal benefits paid petitioner under the Public Safety Officers Benefits Act (42 U.S.C., Section 3796) "shall be credited" against the State's (respondents') liability for payment of workers' compensation death benefits to petitioner. In fact, Act 929 of 1981, Section 4, does not mention the Public Safety Officers Benefits Act. It simply provides that the state workers' compensation funds shall be entitled to a credit against its liability for payment of workers' compensation benefits to the extent of the benefits received "under any *State or Federal* program or act of Congress."

Petitioner characterizes the instant case as one in which there is a conflict between state and federal statutes which "presents a compelling question for decision by this Court." Petitioner further alleges that the effect of the State statute in question is to nullify

the federal statute and subsidize the State of Arkansas' workers' compensation program. A review of the statutes in question against the backdrop of the facts of this case reveals that such is simply not the case, and the Arkansas Court of Appeals has so held.

Petitioner accurately sets forth the facts of the case insofar as the acknowledgement by respondents as to the compensability of petitioner's workers' compensation claim for death benefits as the result of the death of her husband. Further, petitioner acknowledges receipt of $50,000 under the Public Safety Officers Benefits Act (42 U.S.C. Sec. 3796). The state statute in question is then quoted verbatim, followed by the federal statute. It is in the interpretation and effect of the federal statute in which the sharp dispute in this case lies.

The pertinent Sections of the Public Safety Officers Benefits Act (42 U.S.C. Sec. 3796(a)) provides:

> "(a) In any case in which the Administration determines . . . that a public safety officer has died as the direct and proximate result of a personal injury sustained in the line of duty, *the Administration shall pay* a benefit of $50,000.00 . . . to the surviving spouse of such officer;" (and)
>
> "(e) The benefit payable under this part *shall be in addition to* any other benefit that *may* be due from any other source . . ."

Petitioner is apparently laboring under the misconception that the language "shall be in addition to" somehow imposes a burden on the State of Arkansas to pay workers' compensation benefits. In order to reach this erroneous conclusion, she advances the ar-

gument that the federal statute providing the $50,000 benefits and the Arkansas Workers' Compensation laws are somehow in conflict and, therefore, the federal law "supersedes" the provisions of the Arkansas Workers' Compensation Act, specifically Act 929 of 1981, and that by virtue of the Supremacy Clause of the United States Constitution, the state law is to be given no effect. Respondents submit that this is simply not the case.

Petitioner argues that "an obvious conflict between the state and federal law is presented." Respondents, as well as the Arkansas Workers' Compensation Commission, and the Arkansas Court of Appeals, perceive no such conflict and for reasons hereinafter expressed, the argument of petitioner that Act 929 of 1981 has been "superseded" should fail, and review by this tribunal should, therefore, be denied.

The 10th Amendment to the United States Constitution provides:

> "*Rights reserved to states or people.*—The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

It is axiomatic that under the terms of the United States Constitution, certain powers are entrusted to the federal government alone, while others are reserved to the states, and still others may be exercised concurrently by both the federal and state governments.

Surely petitioner does not seriously contend that the right of the several states to enact workers' compensation legislation is a power "delegated" to the

federal government? Or that it is "prohibited" by the Constitution to the states? The power of the states to enact such laws setting forth the amounts of workers' compensation benefits, the persons to whom such benefits are payable, and the circumstances under which they are payable is clearly and undeniably vested in the states.

Is the power to enact workers' compensation laws then one which may be exercised concurrently with the federal government? If so, then, and only then, would we conceivably have the "obvious conflict" to which petitioner has mistakenly assumed exists in this case.

In discussing the inquiry as to whether there indeed exists a conflict between federal and state legislation, the author of 16 Am Jur 2d, § 292 states:

> "When the question is whether the federal act overrides a state law, the entire scheme of the statute must be considered, and a state law enacted under any of the reserved powers—especially if under the police power—is not entitled to be set aside as inconsistent with an Act of Congress, unless there is actual repugnancy or Congress has at least manifested a purpose to exercise its paramount authority over the subject. Absent an obvious repugnancy between the federal and state legislation, a state will be held barred, as a consequence of federal legislation, from legislating within a particular area *only where the intention of Congress to exclude state action is clearly manifested.* The question whether Congress and its Commission acting

> under it have so far exercised the exclusive jurisdiction that belongs to it as to exclude a state must be answered by a judgment upon the particular case; *it will not be held that a federal statute was intended to supersede the exercise of the power of the state, unless there is clear manifestation of an intention, since the exercise of federal supremacy is not lightly to be presumed.*"

Petitioner obviously contends that the grant by the federal government of the $50,000 benefits "in addition to any other benefits which *may* be due from any other source. . ." is a manifestation of the federal government to "exclude state action," or to "supersede the exercise of the power of the state." Such an interpretation is not only a distortion, and misinterpretation, but is patently erroneous. What the federal government has really done is say, "We're going to pay our $50,000 *regardless* of what other benefits you *may* or *may not* be entitled to receive!" There is absolutely no manifestation of an intent to preempt state legislation governing the amount of workers' compensation benefits payable, or to exercise "paramount authority." In fact, the federal legislation clearly and unmistakenly recognizes and is in deference to "other benefits," such as state workers' compensation, which "*may*" be due, without even the remotest suggestion that they intended to control the amount which *may* be due,or even *whether* such benefits are due! In fact, the federal district courts have recognized that they do not have jurisdiction to determine whether a person is entitled to workers' compensation benefits under Arkansas law. *Eagle Star Insurance Co. v. Deal*, 337 F.Supp. 1264, reversed

474 F.2d 1216. Quite simply, they lack subject-matter jurisdiction in these cases. *Phifer v. Union Carbide Corp.*, 492 F.Supp. 484 (E.D. Ark. 1980).

It is abundantly clear that petitioner has misplaced her emphasis on the language of 42 U.S.C. Sec. 3796(e), specifically, her contention that the language "shall be in addition to" makes it mandatory, not only for the benefit to be paid, but for the Courts to enforce the right to the benefit. While the language "any other benefit" may indeed include workers' compensation benefits which *may* be due, the only thing made mandatory by the language "shall be in addition to" is for the federal government to pay $50,000, *regardless* of any other benefit which *may* (or may not) be due.

The entire argument of petitioner on this point simply has no application to the facts of this case because it assumes or presupposes that there is, in fact, a conflict in federal and state law which, as we have seen, simply does not exist. Moreover, the power to legislate concerning workers' compensation benefits, including the amount thereof and the circumstances under which they are payable, is not a power delegated to the federal government, nor prohibited to the state governments, nor is it an area over which the federal government has paramount authority. Neither has the federal government manifested an intention to exclude state action or to supersede the exercise of such power by the state by the use of the language "shall be in addition to any other benefit that *may* be due from any other source. . ." included within the Public Safety Officer's Benefit Act.

As far as the argument advanced by petitioner that the state act would "effectively shift the burden of the first $50,000 of workers' compensation benefits to the federal government," or that such would "subsidize the state workers' compensation program," or "defeat the benevolent intent of Congress," or that application of the state statute would "clearly stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," respondents simply point out that inasmuch as petitioner admits having received $50,000 under the federal law, how can her position on the amount of "other benefits" which "may" be due from any other source affect the "gratuity" which she admits having received? For obvious reasons, respondents feel that further comment on these arguments are unnecessary. As for petitioner's allegation that enforcement of the state statute would "effectively frustrate, thwart and nullify" the purposes of the Congress in enacting the federal law, respondents need only point out that petitioner has indeed received her $50,000 and that such benefits have been paid to ther "in addition to any other benefit that *may* be due from any other source. . ." as provided by the federal law.

As pointed out by the Arkansas Court of Appeals, the constitutionality of an offset between federal benefits and state benefits was recognized in *Richardson v. Belcher*, 404 U.S. 78 (1971) where a reduction in social security benefits to reflect workers' compensation benefits was approved. In another case, the City of Baltimore was held not liable for workers' compensation benefits where the employee received benefits in excess of the workers' compensation benefits from the employer under a city ordinance. *Nooe*

v. Baltimore, 28 Md. App. 348, 345 A.2d 134 (1974). The Arkansas Court of Appeals further pointed out and relied upon *Coletta v. State*, 106 R.I. 764, 263 A.2d 681 (1970) which held that a Rhode Island State Statute authorized the state to credit payments received from the federal government against benefits due under workers' compensation law. And in *State v. Industrial Commission*, 160 Ohio St. 443, 117 N.E. 2d 22 (1954) it was held that the Ohio General Assembly had not only the power to enact a Workers' Compensation Act but to determine under what terms and conditions employees were eligible to participate.

This is exactly what the Arkansas General Assembly has done in the instant case, except they simply determined the amount of benefits payable, a matter entirely within their province, under the 10th Amendment to the U.S. Constitution.

Petitioner argues that the state law "defeats the purpose" of Congress in providing a $50,000 death benefit "above all other benefits received." Respondents respond by simply asking (1) did petitioner receive the $50,000 gratuity?, and (2) was it in addition to all other benefits she "may" or "may not" receive? Certainly. Petitioner got exactly what the federal law provided she receive, and exactly what the state workers' compensation law provides she is entitled to receive.

CONCLUSION

Respondents earnestly submit that the Arkansas Court of Appeals was eminently correct when it stated:

> "Congress has not shown a clear-cut manifestation of an intent to exercise supremacy over a state's right to legislate workers' compensation benefits by the passage of the Public Safety Officers Death Benefits Act. We fail to see a supremacy clause argument. This is especially true when similar cases dealing with federal-state setoffs have been upheld constitutionally."

For all of the foregoing reasons, respondents urge that the decision of the Arkansas Court of Appeals was correct, that no Supremacy Clause Argument is presented, that there is no clash or conflict between state and federal law, and therefore the Petition for Writ of Certiorari should be denied.

Respectively submitted,

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ARKANSAS STATE POLICE and
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No. 85-1388

Supreme Court, U.S.
FILED
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In the

Supreme Court of the United States

October Term, 1985

Carrie Rose, Widow of
William L. Rose, Jr., Deceased,
Employee ..... *Petitioner*

V.

Arkansas State Police, Employer ..... *Respondent*

Public Employee Claims Division,
Arkansas Insurance Department, Carrier..... *Respondent*

ON PETITION FOR WRIT OF CERTIORARI
TO REVIEW
DECISION OF ARKANSAS COURT OF APPEALS

REPLY BRIEF OF PETITIONER

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QUESTION FOR REVIEW

Whether Act 929 of 1981, Section 4, of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605(G) is violative of the Supremacy Clause of the U.S. Constitution (Article VI, Sec. 2) by providing the $50,000.00 federal benefit paid petitioner under the Public Safety Officers Benefits Act (42 U.S.C. Section 3796) shall be credited against the State's (respondents') liability for payment of worker's compensation death benefits to petitioner, constituting an unlawful conflict in state and federal legislation?

TABLE OF CONTENTS

Page

Question for Review i

Table of Contents ii

Table of Authorities ii

Constitutional and Statutory Provisions Involved 1

Argument 3

Conclusion 11

TABLE OF AUTHORITIES

Coletta v. State, 106 R.I. 764, 263 A.2d 681 (1970) 7, 8

Eagle Star Insurance Co. v. Deal, 337 F. Supp. 1264, reversed 474 F.2d 1216 8

First Federal S & L Ass'n, Etc. v. Myrick, 533 F. Supp. 1041, (W.D. Ark. 1982) 7

Hines v. Davidowitz, 312 U.S. 52, 61 S.Ct. 339, 85 L.Ed. 581 (1941) 4, 9

Maryland v. Louisiana, 451 U.S. 725, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981) 3, 7

Nooe v. Baltimore, 28 Md. App. 348, 345 A.2d 134 (1974) 7

Perez v. Campbell, 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233 (1971) 9

Phifer v. Union Carbide Corp., 492 F.Supp. 484 (E.D. Ark. 1980) 8

Richardson v. Belcher, 404 U.S. 78 (1971) 7

State v. Industrial Commission, 160 Ohio St. 443, 117 N.E.2d 22 (1954) 7, 8

Article VI, Sec. 2, U.S. Constitution (Supremacy Clause) 1

42 U.S.C. 3796 (Public Safety Officers Benefits Act) 2

Act 929 of 1981 of Arkansas General Assembly 2, 3

U.S. Code Congressional and Administrative News, Vol. 3, 1979, P. 2529 10

16 Am.Jur.2d Constitutional Law, Sec. 292 at p. 797 5

16 Am. Jur.2d Constitutional Law, Sec. 289 at p. 790 6

No. 85-1388

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Carrie Rose, Widow of
William L. Rose, Jr., Deceased,
Employee ..... *Petitioner*

V.

Arkansas State Police, Employer ..... *Respondent*

Public Employee Claims Division,
Arkansas Insurance Department, Carrier..... *Respondent*

ON PETITION FOR WRIT OF CERTIORARI
TO REVIEW
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REPLY BRIEF OF PETITIONER

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article VI, Sec. 2 of the U.S. Constitution (Supremacy Clause):

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be

bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

42 U.S.C. Sec. 3796 (Public Safety Officers Benefits Act):

> "(a) Amount; recipients. In any case in which the Administration determines, under regulations issued pursuant to this part, that a public safety officer has died as the direct and proximate result of a personal injury sustained in the line of duty, the Administration shall pay a benefit of $50,000 as follows:
>
> > (1) if there is no surviving child of such officer, to the surviving spouse of such officer; . . .
>
> (e) Reductions from final benefit payment. The benefit payable under this part shall be in addition to any other benefit that may be due from any other source..."

Act 929 of 1981 of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605(G) (Supp. 1983)):

> (G) In the event that any public employee who is entitled to receive workers' compensation benefits under the provisions of this Act, as a result of injury, disability or death, and such injuries, disabilities, or death gives rise to an entitlement of benefits under a State or Federal program or under an Act of Congress providing benefits for public safety officers serving a public agency in an official capacity, with or without compensation as a law enforcement officer or as a firefighter or in any other capacity, the state workers' compensation funds shall be entitled to a credit against its liability for payment of workers' compensation benefits to the extent of the benefits received under any State or Federal program or Act of Congress."

ARGUMENT

Respondents essentially make two arguments. Initially, respondents argue there is no conflict between Act 929 of 1981 of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605 (G)) and the Public Safety Officers Benefits Act (41 U.S.C. Sec. 3796). Secondly, respondents suggest the Supremacy Clause (Art. VI, Sec. 2 of the U.S. Constitution) is inapplicable to the present dispute. Such arguments ignore the plain effect of the Arkansas act. Respondents' arguments will be addressed in reverse order.

Respondents suggest the Supremacy Clause is inapplicable to the present controversy. Initially, respondents characterize the subject area as the narrow area of workmen's compensation legislation. Of course, the Public Safety Officers Benefits Act is not a workmen's compensation act, although it serves a similar purpose, that of protecting the financial security of the dependents of public safety officers killed in the line of duty. Unquestionably the state has the right to legislate in such area. Also, without question is the power of the federal government to enact legislation in such area, since the duties of such officers include patrolling the U.S. and interstate highway systems, protecting the flow of interstate commerce, as well as assisting federal officers in effecting arrests and in a multitude of other ways. So the area is one of concurrent federal and state power, which cannot be seriously questioned by respondents.

This honorable Court, in the recent case of *Maryland v. Louisiana*, 451 U.S. 725, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981) discussed at length the various situations in which the Supremacy Clause applies. In *Maryland*, supra, this Court was concerned with an allegation the State of Louisiana's "first use tax" violated the Supremacy Clause because it interfered with federal regulation of the transportation and sale of natural gas in interstate com-

merce. After quoting the Supremacy Clause of the U.S. Constitution, this Court stated at page 2128 of 101 S.Ct.:

> "It is basic to this constitutional command that all conflicting state provisions be without effect. See *McCulloch v. Maryland*, 4 Wheat. 316, 427, 4 L.Ed. 579 (1819). See also *Hines v. Davidowitz*, 312 U.S. 52, 61 S.Ct. 399, 85 L.Ed. 581 (1941). Consideration under the Supremacy Clause starts with the basic assumption that Congress did not intend to displace state law. See *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 1152, 91 L.Ed. 1447 (1947). But as the Court stated in Rice:
>
> > 'Such a purpose [to displace state law] may be evidenced in several ways. The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. *Pennsylvania R. Co. v. Public Service Comm'n*, 250 U.S. 566, 569 [40 S.Ct. 36, 37, 64 L.Ed. 1142]; *Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148 [62 S.Ct. 491, 86 L.Ed. 754]. Or the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. *Hines v. Davidowitz*, 312 U.S. 52, 61 S.Ct. 399, 85 L.Ed. 581. Likewise, the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose. *Southern R. Co. v. Railroad Commission*, 236 U.S. 439 [35 S.Ct. 304, 59 L.Ed. 661]; *Charleston & W.C.R. Co. v. Varnville Co.*, 237 U.S. 597 [35 S.Ct. 715, 59 L.Ed. 1137]; *New York Central R. Co. v. Winfield*, 244 U.S. 147 [37 S.Ct. 546, 61 L.Ed. 1045]; *Napier v. Atlantic Coast Line R. Co.*, [272 U.S. 605, 47 S.Ct. 207, 71 L.Ed. 432]. *Or the state policy may produce a result inconsistent with the objective of the federal statute. Hill v. Florida*, 325 U.S. 538 [65 S.Ct. 1373, 89 L.Ed. 1782]' Ibid.

> *Of course, a state statute is void to the extent it conflicts with a federal statute*—if, for example, 'compliance with both federal and state regulations is a physical impossibility.' *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 1332, 142-143, 83 S.Ct. 1210, 1217-18, 10 L.Ed.2d 248 (1963), *or where the law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' Hines v. Davidowitz*, supra, at 67, 61 S.Ct. at 404. See generally *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 157-158, 98 S.Ct. 988 944-45, L.Ed.2d 179 (1978); *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 633, 93 S.Ct. 1854, 1859, 36 L.Ed.2d 547 (1973)." (emphasis added)

The Supremacy clause clearly applies when the state legislative enactment produces a result inconsistent with the purposes and objectives of Congress in enacting the federal statutory scheme, which is the case here. Congress expressly provided the $50,000.00 benefit payable under the Public Safety Officers Benefits Act "shall be in addition to any other benefit that may be due from any other source." (42 U.S.C. Sec. 3796(e)) Even if such language had not been used, it would be clear the purposes and objectives of the Arkansas legislation and federal legislation conflict. The use of such language by Congress leads one to believe Congress was doing its best to make its intent clear and prevent the very thing from occurring that has occurred in the State of Arkansas as a result of Act 929 of 1981. The $50,000.00 gratuity provided by Congress was intended to better the lot of dependents of deceased police officers, not subsidize the State of Arkansas' worker's compensation program.

As authority for their position, respondents quote a portion of Sec. 292 of Am.Jur.2d, Constitutional Law, but conspicuously omit the sentence immediately preceding the quote appearing in their brief. The discussion of the law appearing in Sec. 292 of 16 Am.Jur.2d reads, more completely, as follows:

> *"Obvious conflict, actual or potential, between federal and state legislation, leads to easy exclusion of state action,* but there is a difficult penumbral area which can be rendered progressively clear only by the course of litigation. When the question is whether the federal act overrides the state law, the entire scheme of the statute must be considered, and a state law enacted under any of the reserved powers—especially if under the police power—is not to be set aside as inconsistent with an act of Congress, *unless there is actual repugnancy* or Congress has at least manifested a purpose to exercise its paramount authority over the subject. *Absent an obvious repugnancy between the federal and state legislation,* a state will be held barred, as a consequence of federal legislation, from legislating within a particular area only where the intention of Congress to exclude state action is clearly manifested.: (emphasis added)

Of course, here we are concerned with "an actual repugnancy" in the two statutory enactments. Also helpful in this regard is the following discussion appearing in Sec. 289 of 16 Am.Jur.2d, Constitutional Law:

> "By reason of the provision of the United States Constitution that the Constitution and laws passed in pursuance thereto shall be the supreme law of the land, *if a law passed by state in the exercise of it's acknowledged powers comes into conflict with an act of Congress, the state law must yield.* The federal and state legislatures cannot occupy the position of equal opposing sovereignties, because the Constitution declares the supremacy of the laws passed in pursuance thereof. The principal is therefore fundamental that state laws must yield to acts of Congress within the sphere of it's delegated power, even though the state laws were enacted in the exercise of acknowledged or uncontraverted powers, since giving effect to directions of state law which are contrary to statutes enacted by Congress pursuant to it's delegated power would result in the federal statute no longer being the supreme law of the land, as is required by the Federal Constitution."

Judge Franklin Waters in *First Federal Savings and Loan Association, etc., v. Myrick*, 533 F.Supp. 1041 (W.D. Ark. 1982) also explained the occasions for application of the Supremacy Clause. Judge Waters stated at Page 1044:

> "The Supremacy Clause invalidates state laws in two situations. In the first and rarer circumstance, it invalidates all state laws whether or not they are consistent with federal law. This 'complete ouster of state power' must be the clear and mainfest purpose of Congress 'either [because] the nature of the regulated subject matter permits no other conclusions, or [because] the Congress has unmistakenly so ordained.' (cite omitted)
>
> *In the second and more frequent situation, the Supremacy Clause invalidates conflicting state law, not because the federal legislation has completely occupied the field, but because the state law is in conflict with the federal.*" (cites omitted) (emphasis added)

It is clear from *Maryland v. Louisiana*, supra, as well as the other authorities cited above, application of the Supremacy Clause is not limited to situations where the federal government has sought to exclude state action, but applies in every instance where there is a conflict or repugnancy between state and federal legislation, as here.

Respondents cite *Richardson v. Belcher*, 404 U.S. 78 (1971), *Nooe v. Baltimore*, 28 Md. App. 348, 345 A.2d 134 (1974), *Coletta v. State*, 106 R.I. 764, 263 A.2d 681 (1970), and *State v. Industrial Commission*, 160 Ohio St. 443, 117 N.E.2d 22 (1954), which are either not in point or easily distinguishable. *Richardson v. Belcher*, supra held Section 224 of the Social Security Act, which requires a reduction in Social Secuurity benefits to reflect workman's compensation payments was not violative of the due process clause of the fifth amendment. No supremacy clause issue was raised since it was a federal, not state, enactment that provided for the credit against the right to benefits. *Nooe v.*

Baltimore, supra was simply a case of a city police officer receiving disability benefits from a pension plan provided for by a city ordinance also receiving workman's compensation benefits from the city under a separate enactment. Again, no federal legislation was involved. *Coletta v. State*, supra, concerned a situation where a Rhode Island national guardsman sustained injuries, was ultimately hospitalized in a U.S. Naval hospital, where he was immediately federalized and transferred from inactive duty National Guard status to regular active duty as a Staff Sargeant in the U.S. Army, which entitled him to regular Army pay, subsistance allowance and quarters allowance for his wife, in addition to medical and hospital treatment at the U.S.Government's expense. The Rhode Island Court merely held he could not receive both his regular Army pay and other Army benefits, and receive full worker's compensation benefits from the state. Since he was receiving regular Army pay, he would receive double compensation if he received full worker's compensation benefits, as well. No Supremacy Clause issue was involved. *State v. Industrial Commission*, supra, concerns only an offset of one form of state benefit against another state benefit. Again, no Supremacy Clause issue was involved.

The federal decisions cited by respondents, *Eagle Star Insuance Co. v. Deal*, 337 F.Supp. 1264, reversed 474 F.2d 1216, and *Phifer v. Union Carbide Corp.*, 492 F.Supp. 484 (E.D. Ark. 1980), are cited for the proposition that federal courts do not have jurisdiction to determine whether a person is entitled to worker's compensation benefits under Arkansas law. That is not in issue. The petitioner filed her worker's compensation claim with the Arkansas Worker's Compensation Commission, not the federal courts.

The only real issue is whether or not the purposes and objectives of Act 929 of 1981 of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605(G)) and the Public Safety Officer's Benefits Act (42 U.S.C. Sec. 3796) conflict. If so, the offending provision of state law is invalid pursuant to

the Supremacy Clause. As was indicated in the petitioner's petition, the test for determining whether a conflict exists is set forth in *Heinz v. Davidowitz*, 312 U.S. 52, 61 S.Ct. 339, 85 L.Ed.2d 581 (1941), and *Perez v. Campbell*, 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233 (1971).

In *Perez*, supra, this Court considered a clash between Arizona's Motor Vehicle Safety Responsibility Act and the Federal Bankruptcy Act, since the provisions of the state law providing for suspension of a motorist's license who had an unsatisfied judgment against him clashed with the policies of the Bankruptcy Act giving debtors a "clean slate". Unquestionably the state had a right to legislate on the subject, as did the federal government, both laws touching upon the financial condition of the debtor. After considering the two statutes, the Court in *Perez*, supra, stated at Page 242 of 29 L.Ed.2d:

> " . . . In the final analysis, our function is to determine whether a challenged state statute '*stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress*, . . . '" (cites omitted) (emphasis added)

This Court looked to the *effect* of the law and held the Arizona Motor Vehicle Safety Responsibility Act to be invalid, stating at page 244 of 29 L.Ed.2d:

> "*Any statute which frustrates the full effectiveness of federal law is rendered invalid by the supremacy clause.*"

In the face of these authorities, respondents maintain there is no conflict between the state and federal enactments that are the subject of this litigation. Again, such argument ignores the plain *effect* of Act 929 of 1981 upon the intended benefit of the Public Safety Officer's Benefits Act. The Arkansas enactment effectively absorbs the $50,000.00 federal benefit in its entirety by allowing the

state to credit such benefits against the state's liability for workman's compensation death benefits to the petitioner. The petitioner is rendered no better off than if the Public Safety Officer's Benefits' Act were not in existence. Congress did not intend to subsidize the State of Arkansas for the first $50,000.00 of worker's compensation death benefits by enacting the Public Safety Officer's Benefits Act. Congress *did* intend to provide a $50,000.00 gratuity to the dependents of police officers killed in the line of duty, over and above all other benefits received. *U.S. Code Congressional and Administrative News*, Vol. 3, 1979, page 2529. Here, what the federal law gives, the state law takes away. Clearly the purposes and objective of Congress have been thwarted in Arkansas by Act 929 of 1981.

CONCLUSION

Act 929 of 1981 relied upon by respondents must yield to and is superseded by the provisions of the Public Safety Officer's Benefits Act under the Surpemacy Clause of the U.S. Constitution, such federal act expressly providing the $50,000.00 benefit to dependents of police officers killed in the line of duty "shall be in addition to" any other benefits from any other source, necessarily including worker's compensation benefits. Congress intended for dependents of police officers killed in the line of duty in every state in the Union to benefit from the Public Safety Officer's Benefits Act, not just those in states other than Arkansas. Act 929 of 1981 unquestionably "stands as an obstacle to the full purposes and objectives of Congress" in the language of *Hines*, supra. Petitioner respectfully prays that a writ of certiorari issue to review the decision of the Arkansas Court of Appeals.

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Supreme Court, U.S.
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No. 85-1388 (4)

In the Supreme Court of the United States

OCTOBER TERM, 1986

CARRIE ROSE, PETITIONER

v.

ARKANSAS STATE POLICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE ARKANSAS COURT OF APPEALS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

The Public Safety Officers' Benefits Act of 1976, 42 U.S.C. 3796 *et seq.*, provides for a federal payment of $50,000 to the survivors of law enforcement officers who are killed in the line of duty, and guarantees that this payment "shall be in addition to any other benefit that may be due from any other source" (42 U.S.C. 3796(e)). The question presented is whether the Benefits Act preempts Ark. Stat. Ann. § 12-3605(G) (Supp. 1985), which reduces the State's workers' compensation liability to the survivors of law enforcement officers by the amount paid those survivors "under an of Congress."

TABLE OF CONTENTS

Page

Statement 1

Argument 3

Conclusion 8

TABLE OF AUTHORITIES

Cases:

Allis-Chalmers.Corp. v. *Lueck*, No. 83-1748 (Apr. 16, 1985) 3

Capital Cities, Inc. v. *Crisp*, 467 U.S. 691 ..... 3, 4

Coletta v. *State*, 106 R.I. 764, 263 A.2d 681 6-7

Eagle Star Ins. Co. v. *Deal*, 377 F. Supp. 1264, rev'd, 474 F.2d 1216 7

Gibbons v. *Ogden*, 22 U.S. (9 Wheat.) 1 3

Hillsborough County v. *Automated Medical Laboratories, Inc.*, No. 83-1925 (June 3, 1985) 3

Hines v. *Davidowitz*, 312 U.S. 52 3

Kosydar v. *National Cash Register Co.*, 417 U.S. 62 7

Michigan Canners & Freezers Ass'n, Inc. v. *Agricultural Marketing & Bargaining Board*, 467 U.S. 461 4

Nash v. *Florida Industrial Comm'n*, 389 U.S. 235 6

Page

Cases—Continued:

Nooe v. *Baltimore*, 28 Md. App. 348, 345 A.2d 134 7

Phifer v. *Union Carbide Corp.*, 492 F. Supp. 483 7

Richardson v. *Belcher*, 404 U.S. 78 ..... 2, 6

Russell v. *LEAA*, 637 F.2d 1255 5

State ex rel De Boe v. *Industrial Comm'n*, 161 Ohio St. 67, 117 N.E.2d 925 7

Wisconsin Dep't of Industry, Labor & Human Relations v. *Gould, Inc.*, No. 84-1484 (Feb. 26, 1986) 6

Constitution and Statutes:

U.S. Const. Art. VI, Cl. 2 (Supremacy Clause) 2

Public Safety Officers' Benefits Act, Pub. L. No. 94-430, § 2, 90 Stat. 1346, 42 U.S.C. 3796 *et seq.* 1

42 U.S.C. 3796(a) 1

42 U.S.C. 3796(e) 2, 4

42 U.S.C. 3796(e)(1) 4

42 U.S.C. 3796(e)(2) 4

42 U.S.C. 3796(f) 5

Pub. L. No. 96-157, § 2, 93 Stat. 1219 1

Ark. Stat. Ann. § 12-3605(G) (Supp. 1985) 2, 6

BEST AVAILABLE COPY

Page

Miscellaneous:

122 Cong. Rec. (1976):

p. 12002 5

p. 12003 4

p. 12004 6

p. 12005 4

p. 12006 5

p. 12007 ..... 4, 5

p. 12007-12008 5

p. 12008 ..... 4, 5

p. 12012 ..... 4, 5

p. 12016 6

p. 22634 5

H.R. Rep. 94-1032, 94th Cong., 2d Sess. (1976) 4, 5

Rev. Rul. 77-235, 1977-2 C.B. 45 6

S. Rep. 94-816, 94th Cong., 2d Sess. (1976) 4, 5

S. Rep. 96-142, 96th Cong., 1st Sess. (1979) 5

In the Supreme Court of the United States

OCTOBER TERM, 1986

No. 85-1388

CARRIE ROSE, PETITIONER

v.

ARKANSAS STATE POLICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE ARKANSAS COURT OF APPEALS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is filed in response to the Court's order inviting the Solicitor General to express the views of the United States.

STATEMENT

William Rose, an Arkansas State Trooper, was killed while on duty in December 1982. As a result of his death, his widow, the petitioner here, received a $50,000 benefit from the federal government pursuant to the Public Safety Officers' Benefits Act (Benefits Act), 42 U.S.C. 3796 *et seq.* That statute, enacted in 1976 (Pub. L. No. 94-430, § 2, 90 Stat. 1346), provides for a payment in the amount of $50,000 to the survivors of "a public safety officer [who] has died as a direct and proximate result of a personal injury sustained in the line of duty." 42 U.S.C. 3796(a).[1]

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[1]The statute was reenacted in essentially identical terms in 1979. Pub. L. No. 96-157, § 2, 93 Stat. 1219.

Petitioner also sought death benefits under the Arkansas workers' compensation program. Respondent, the state entitys responsible for dispensing workers' compensation benefits, acknowledged that petitioner's claim was compensable (Pet. App. A2-A3). But it insisted that its liability to petitioner should be reduced by the amount that she had received from the federal government under the Benefits Act. In making this claim, respondent relied on a provision of Arkansas law enacted in 1981, five years after the Benefits Act took effect. The Arkansas provision (Ark. Stat. Ann. § 12-3605(G) (Supp. 1985)) states as follows:

> In the event that any public employee * * * is entitled to receive workers' compensation benefits * * * as a result of * * * death, and such * * * death gives rise to an entitlement of benefits under * * * an Act of Congress providing benefits for public safety officers serving a public agency in an official capacity, * * * the state workers' compensation fund[] shall be entitled to a credit against its liability for payment of * * * benefits received under * * * [the] Act of Congress.

An administrative law judge rejected respondent's claim for a set-off (Pet. App. E1-E5). He relied on 42 U.S.C. 3796(e), which provides that "[t]he benefit payable under [the Benefits Act] shall be in addition to any other benefit that may be due from any other source." In view of this provision, the judge concluded that the Benefits Act "is in direct conflict" with Ark. Stat. Ann. § 12-3605(G) (Supp. 1985) and that "the latter must fail under the Supremacy Clause of the United States Constitution." Pet. App. E3. The Arkansas Workers' Compensation Commission reversed, finding "no conflict" between the Benefits Act and the Arkansas statute (Pet. App. D3).

The Arkansas Court of Appeals affirmed the Commission's ruling. Citing *Richardson* v. *Belcher*, 404 U.S. 78 (1971), the court held that there is nothing inherently

unconstitutional in "an offset between federal benefits and state benefits" (Pet. App. A4). And the court concluded that "Congress has not shown a clear-cut manifestation of an intent to exercise supremacy over a state's right to legislate workers' compensation benefits by the passage of the [Benefits] Act" (*id.* at A5). The court therefore "fail[ed] to see a supremacy clause argument" and upheld the reduction of respondent's liability to petitioner by $50,000 (*ibid.*).[2] The Arkansas Supreme Court denied petitioner's request for review (*id.* at C1).

ARGUMENT

1. The principles governing cases such as this one, which involve claims of federal preemption, are "familiar and well-established." *Capital Cities, Inc.* v. *Crisp*, 467 U.S. 691, 698 (1984). "[T]he Supremacy Clause, U.S. Const., Art. VI, cl. 2, invalidates state laws that 'interfere with, or are contrary to' federal law." *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, No. 83-1925 (June 3, 1985), slip op. 5 (quoting *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1, 211 (1824)). Thus, as the Court repeatedly has explained, "state law is nullified to the extent that it actually conflicts with federal law"—where, for example, "state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' " *Hillsborough County*, slip op. 5 (quoting *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)). In a case involving such a preemption claim, the validity of the challenged state law turns on its consistency with the congressional purposes. See *Allis-Chalmers Corp.* v. *Lueck*, No. 83-1748 (Apr. 16, 1985), slip

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[2]Petitioner had been awarded $15,000 in state death benefits pursuant to other provisions of state law, and the court of appeals held that this amount also could be set off against the State's liability for workers' compensation benefits (Pet. App. A2, A5-A7). This state-law holding is not in dispute here.

op. 6. See generally *Capital Cities*, 467 U.S. at 698-699; *Michigan Canners & Freezers Ass'n, Inc.* v. *Agricultural Marketing & Bargaining Board*, 467 U.S. 461, 469 (1984).

2. Here, an "actual conflict" between the state program and federal law is plain from the face of the Benefits Act. With the exception of benefits payable under two specifically enumerated federal programs,[3] the Benefits Act unambigously provides that "[t]he benefit payable under this subchapter shall be *in addition to any other benefit* that may be due from any other source." 42 U.S.C. 3796(e) (emphasis added). The Arkansas statute, which looks to the federal payment in making a dollar-for-dollar reduction in Arkansas workers' compensation benefits, simply disregards this congressional directive.

Respondent nevertheless insists (Br. in Opp. 8-9) that the Benefits Act does not preclude the States from taking federal payments into account in making their own compensation awards; they contend that Congress intended only to ensure that an officer's survivors would receive at least $50,000 from *some* source. But the legislative history of the Benefits Act makes it clear that Congress intended to foreclose precisely that interpretation of the statute. Passage of the Benefits Act was prompted by concerns about the inadequacy of death benefits paid by States and localities to the survivors of law enforcement officers killed in the line of duty. See H.R. Rep. 94-1032, 94th Cong., 2d Sess. 3 (1976); 122 Cong. Rec. 12003 (1976) (remarks of Rep. Matsunaga); *ibid.* (remarks of Rep. Fish); *id.* at 12005 (remarks of Rep. Biaggi); *ibid.* (remarks of Rep. Lent); *id.* at 12007 (remarks of Rep. Seiberling); *id.* at 12008 (remarks of Rep. Ford); *id.* at 12012 (remarks of Rep. Rodino); *id.* at 12002 (remarks of

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[3]See 42 U.S.C. 3796(e)(1) and (2). These exceptions were included in the Benefits Act "[t]o prevent double payment from Federal sources." S. Rep. 94-816, 94th Cong., 2d Sess. 8 (1976).

Rep. Eilberg); *id.* at 12016 (remarks of Rep. Fish). See generally *Russell* v. *LEAA*, 637 F.2d 1255, 1261 & n.13 (9th Cir. 1980). While recognizing that the responsibility for providing adequate benefits lay in the first instance with the States (see, *e.g.*, 122 Cong. Rec. 12007-12008 (remarks of Rep. Gilman)), Congress authorized federal payments "in recognition of society's moral obligation to compensate the families of those individuals who daily risk their lives to preserve peace and to protect our lives and property." H.R. Rep. 94-1032, *supra*, at 3. See S. Rep. 94-816, 94th Cong., 2d Sess. 5 (1976); 122 Cong. Rec. 12006 (1976) (remarks of Rep. Zeferetti); *id.* at 12008 (remarks of Rep. Minish); *id.* at 22634 (remarks of Sen. McClellan).

This federal payment—repeatedly described as a "gratuity" (see, *e.g.*, 122 Cong. Rec. 12007 (1976) (remarks of Rep. Gilman); *id.* at 12012 (remarks of Rep. Gaydos); see also S. Rep. 96-142, 96th Cong., 1st Sess. 58 (1979))—was expressly *not* intended to substitute for state death benefits. Congress thus explained that "the $50,000 death benefit is over and above all other benefits which the officer's survivors may receive." H.R. Rep. 94-1032, *supra*, at 6. See *id.* at 5. It was made equally clear during floor debate that the Benefits Act was "designed to meet the immediate financial need of survivors and [was] not intended as a substitute measure in instances where State and local governments already have benefit programs in effect." 122 Cong. Rec. 12008 (1976) (remarks of Rep. Minish). See *id.* at 12002 (remarks of Rep. Eilberg) ($50,000 federal payment is "over and above all other benefits"); *id.* at 12012 (remarks of Rep. Gaydos) ("it is intended that [the Benefits Act] supplement local efforts").[4] Cf. *Russell*, 637 F.2d at 1261. The challenged Arkansas statute, which converts the $50,000 federal

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[4]Congress's intention that the $50,000 payment remain undiluted is emphasized by other aspects of the Benefits Act program. For example, benefits paid under the statute are immune both from attachment (see 42 U.S.C. 3796(f)) and from federal income tax. See H.R. Rep. 94-1032,

payment from a "gratuity" for the decedent's family into a subsidy for the state workers' compensation fund, plainly frustrates this congressional goal. And it would indeed be ironic if a federal benefit that Congress enacted because it found state benefits to be inadequate itself became the occasion for reducing state benefits below their already presumptively-inadequate level.

It should be added that this is not a case in which federal law requires the State to undertake new financial obligations. To the contrary, respondent concededly is liable to petitioner under the existing Arkansas workers' compensation program, unless it is relieved of that obligation by the challenged Arkansas statute.[5] There is nothing novel, moreover, in the proposition that Congress may bar the States from taking specified factors into account in the operation of their benefit or spending programs. See, *e.g.*, *Nash* v. *Florida Industrial Comm'n*, 389 U.S. 235, 236-237 (1967). Cf. *Wisconsin Dep't of Industry, Labor & Human Relations* v. *Gould, Inc.*, No. 84-1484 (Feb. 26, 1986), slip op. 7-8. Because Congress erected such a bar here—plainly indicating that payments made under the Benefits Act should supplement, rather than substitute for, state death benefits—application of Ark. Stat. Ann. § 12-3605(G) (Supp. 1985) to Benefits Act awards is foreclosed by the Supremacy Clause.[6]

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supra, at 5-6; 122 Cong. Rec. 12004 (1976) (remarks of Rep. Drinan); *ibid.* (remarks of Rep. Biaggi); Rev. Rul. 77-235, 1977-2 C.B. 45.

[5]The problems that might arise if a State, in response to a federal statute like the one here, simply declined to enact a benefits program of its own, or entirely eliminated a program that previously existed, accordingly are not presented in this case. Cf. 122 Cong. Rec. 12016 (1976) (remarks of Rep. Wiggins).

[6]The cases relied upon by respondent (Br. in Opp. 8-11) are wholly inapposite. In *Richardson* v. *Belcher*, 404 U.S. 78 (1971), cited both by respondent and by the court below, this Court upheld Congress's use of *state* payments to reduce *federal* benefits; the case accordingly presented no Supremacy Clause issue. In *Coletta* v. *State*, 106 R.I. 764,

3. While there is no conflict between the decision of the Arkansas Court of Appeals and that of any other court, so far as we are aware Arkansas currently stands alone among the States in setting off the $50,000 Benefits Act payment against its liability under a workers' compensation program.[7] The approach taken by Arkansas accordingly "present[s] important questions touching the accommodation of state and federal interests under the Constitution." *Kosydar* v. *National Cash Register Co.*, 417 U.S. 62, 65 (1974). In order to ensure uniform administration of this nationwide benefits program, review by this Court of the question presented here would be appropriate.[8]

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263 A.2d 681 (1970), a state court held that an individual receiving full pay from the United States Army was, as a matter of state law, ineligible for workers' compensation benefits. That case involved neither a preemption claim nor a federal statute containing a provision similar to Section 3796(e). In *Nooe* v. *Baltimore*, 28 Md. App. 348, 345 A.2d 134 (5 Ct. Spec. App. 1975), and *State ex rel. De Boe* v. *Industrial Comm'n*, 161 Ohio St. 67, 117 N.E.2d 925 (1954), there was similarly no federal question presented: both involved state-law questions concerning the availability of workers' compensation. Finally, *Eagle Star Ins. Co.* v. *Deal*, 337 F. Supp. 1264, 1273 (W.D. Ark. 1972), rev'd on other grounds, 474 F.2d 1216 (8th Cir. 1973), and *Phifer* v. *Union Carbide Corp.*, 492 F. Supp. 483, 484 (E.D. Ark. 1980)—decisions holding that federal courts lack jurisdiction to determine an individual's entitlement to workers' compensation benefits under Arkansas law—are irrelevant in this case because petitioner filed her claim with the Arkansas Workers' Compensation Commission and litigated it in the Arkansas courts.

[7]We are informed by the Bureau of Justice Assistance, the office within the Department of Justice that administers the Benefits Act, that awards totalling some $11-$12 million are made under the statute annually. Over the last five years, Arkansas claimants have received approximately $1.5 million under the Benefits Act.

[8]Because the inconsistency between the federal and state laws is so plain from the language and legislative history of the Benefits Act, the Court may wish to consider summary reversal.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted.

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SEPTEMBER 1986

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

SUPREME COURT OF THE UNITED STATES

CARRIE ROSE ETC. *v.* ARKANSAS STATE POLICE

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ARKANSAS

No. 85–1388. Decided November 3, 1986

PER CURIAM.

In December 1982, Arkansas State Trooper William Rose was killed in the line of duty. His widow, petitioner in this action, received a $50,000 benefit from the federal government pursuant to the Public Safety Officers' Death Benefits Act, 42 U. S. C. § 3796 *et seq.* The Benefits Act provides for a $50,000 payment to the survivors of a state law-enforcement officer who dies as a result of job-related injuries. The federal statute also provides that "[t]he benefit payable under this subchapter shall be in addition to any other benefit that may be due from any other source," with two exceptions not relevant here. § 3976(e).

Petitioner also applied for death benefits under the Arkansas Workers' Compensation Act. See Ark. Stat. Ann. § 12–3601 *et seq.* (1979). Co-respondent, the Public Employee Claims Division of the Arkansas Insurance Department, acknowledged that the claim was compensable, but insisted on reducing the amount owed to Rose by the amount she had received under the federal Benefits Act. In support of its position, respondent relied on a state statute that provides:

> In the event that any public employee who is entitled to receive workers' compensation . . . as a result of injury, disability or death, and such injuries, disabilities, or death gives rise to an entitlement of benefits under . . . an Act of Congress providing benefits for public safety officers . . . the state workers' compensation fund[] shall be entitled to a credit against its liability . . . to the

extent of the [federal] benefits received . . . . Ark. Stat. Ann. § 12–3605(G) (Supp. 1985).

Rose filed a complaint with the Arkansas Workers' Compensation Commission, claiming that her state benefits should not be offset by the federal payment. An Administrative Law Judge ordered respondent to compensate petitioner in full, noting that the Benefits Act plainly states that the federal money is intended to supplement all other benefits. The ALJ ruled that the state statute was in direct conflict with the Benefits Act, and that under the Supremacy Clause of the United States Constitution,* the Arkansas provision must give way. The full Commission reversed the ALJ and allowed the offset, finding no inconsistency between the state and federal laws.

The Arkansas Court of Appeals affirmed the Commission's decision. *Rose* v. *Arkansas State Police*, 16 Ark. App. 96, 697 S. W. 2d 927 (1985). The court first cited *Richardson* v. *Belcher*, 404 U. S. 78 (1971), for the proposition that there is nothing inherently unconstitutional about offsetting state and federal benefits. The state court then concluded that the offset in this case was proper, because the Benefits Act does not show a Congressional intent to intrude on the states' right to set workers' compensation benefits. Therefore, said the court, "we fail to see a supremacy clause argument." *Rose* v. *Arkansas State Police*, *supra*, at ——, 697 S. W. 2d, at 928. The Arkansas Supreme Court denied petitioner's request for review.

There can be no dispute that the Supremacy Clause invalidates all state laws that conflict or interfere with an act of Congress. *Hayfield Northern R. Co.* v. *Chicago & N. W. Transp. Co.*, 467 U. S. 622, 627, and n. 4 (1984) (citing

*"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U. S. Const., Art. VI, cl. 2.

Gibbons v. *Ogden*, 9 Wheat. 1, 211 (1824)). In this case, the conflict between the Arkansas law and the Benefits Act is clear from the language of the statutes. The Benefits Act unambiguously provides that the $50,000 payment "shall be *in addition* to any other benefit that may be due from *any* other source." 42 U. S. C. §3796(e) (emphasis added). Congress plainly intended to give supplemental benefits to the survivors, not to assist the states by subsidizing their benefit programs. The Arkansas statute, however, passed five years after the Benefits Act was enacted, provides that the state award shall be reduced by the full amount of the federal payment. The state statute authorizes the precise conduct that Congress sought to prohibit and consequently is repugnant to the Supremacy Clause.

The state court nevertheless failed to perceive a tension between the two statutes, concluding that the federal law did not alter the states' traditional right to set the level of workers' compensation benefits. This reasoning misses the point. The Benefits Act does not require a state to set a particular benefit level for its citizens; it simply prohibits a state from reducing the compensation it otherwise would provide to account for the federal payment. This reading of the Benefits Act is consistent with the legislative history, that shows that Congress was concerned about the inadequacy of death benefits paid to police officers by some states. See H. R. Rep. No. 94–1032, p. 3 (1976); see also 122 Cong. Rec. 12,005 (1976) (remarks of Rep. Biaggi). Congress intended that the $50,000 would be a "gratuity," and would provide payment "over and above all other benefits." See S. Rep. No. 96–142, p. 58 (1979) ("gratuity"); 122 Cong. Rec. 12,002 (remarks of Rep. Eilberg).

The Arkansas court's reliance on *Richardson* v. *Belcher*, *supra*, is misplaced. In that case the Court upheld a law allowing the reduction of *federal* benefits to account for *state* awards of workers' compensation. See 404 U. S., at 78–79 and n. 1. *Belcher* did not present a Supremacy Clause issue.

Because the Benefits Act prohibits states from offsetting their death benefits against the federal payment, § 12–3605(G) of the Ark. Stat. Ann. is invalid. We therefore grant the petition for certiorari, reverse the decision of the Arkansas Court of Appeals, and remand for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE MARSHALL dissents from this summary disposition, which has been ordered without affording the parties prior notice or an opportunity to file briefs on the merits. See, *e. g.*, *Acosta* v. *Louisiana Department of Health and Human Services, et al.*, —— U. S. —— (1986) (MARSHALL, J., dissenting).